UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026-LAS

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In the Matter of:

MOTORS LIQUIDATION COMPANY

Debtor.

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United States Bankruptcy Court

One Bowling Green

New York, New York 10004-1408

July 16, 2015

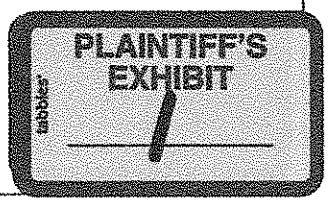
9:48 AM

B E F O R E:

HONORABLE ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

ECRO: K. HARRIS



Hearing Re: No Stay Pleading

Hearing Re: Motion to Strike Certain Documents Contained in Appellants' Designation of Items to be Included in the Record on Appeal

Transcribed by: Theresa Pullan

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MR. WEISFELNER

PROCEEDINGS

THE COURT: I want to get appearances, and then I have some comments.

MR. BABCOCK: Good morning, Your Honor, Russell Babcock, I'm here on behalf of the estate of Kathleen Pillars.

THE COURT: Mr. Babcock that is.

MR. BABCOCK: Yes.

THE COURT: Okay. I thought I saw a different name on the papers, Mr. Babcock.

MR. BABCOCK: Yes, Mr. Markell Mastromarco is a lawyer, while he is a partner of the firm I am employed with, I filed an appearance too so I could argue the motion today.

THE COURT: Okay, sure. Mr. Steinberg.

MR. STEINBERG: On behalf of the New General Motors, and I'm with Mr. Davidson.

THE COURT: Okay. Folks, you don't need me to tell you about the similarities between this case and Deutsch. But there is a twist in it that I need you to address which neither of you dealt with as directly as I would have liked in the papers.

Mr. Babcock, Mr. Mastramarcos's brief recognized my earlier ruling in Deutsch which is quite obviously directly on point. And he tried to get around that, not by saying that Deutsch was improperly decided, but relied on a different kind of argument, although he didn't use what I would have thought

would be the right words to describe it.

The premise was that because whoever had filed the removal petition in the answer in the State Court action which I think was in Michigan, certainly wasn't in this district, had relied on the earlier version of the sale agreement. It had apparently said "execution copy," but was amended by a first amendment filed on June 30th, 2009, that this might be an "occurrence" even though I had held in Deutsch that the death of a victim after a car wreck wasn't either an "accident" or an "incident." But you didn't flesh out the law of, didn't mention the key words, "judicial estoppel," trying to rely on some kind of admission.

And it seems to me in essence what you and Mr. Mastromarco are asking me to do is to rely on a wrong version of the sale agreement. I got a couple of problems with that: a) I didn't know how a guy in my position could responsibly rely on what he knows to be the wrong agreement, and as a matter of Second Circuit law, I thought it's not unique to the Second Circuit because the Supreme Court has said it as well. To make out judicial estoppel, you need to have a couple of things: one is materially different statements, and second, reliance by the tribunal on the statement by the opponent.

New GM used the wrong language as far as I can tell. I will allow Mr. Steinberg to be heard if he wants to correct me on that, but it wasn't materially wrong at least at the

time, and more importantly, there's no reliance by me on that, and then third, of course, what the agreement says is the best evidence of what it says, not what a lawyer says about what the agreement says. So I need help from you on that.

Conversely, Mr. Steinberg, I'll need some help from you as to why either [indiscernible] there seemed to be reliance on the old language rather than the new, and why the issue that I just articulated wasn't raised. Once I rely on the proper language in the agreement, and I got to tell you Mr. Babcock that I think you'd have to throw a Hail Mary to convince me that I should rely on the wrong language. So you can tell me whether you think Deutsch was wrongly decided, and materially wrongly decided, being mindful of what I said in quite a number of published decisions, that the interest of predictability in the Southern District of New York is of great importance and that in the absence of manifest error I follow the decisions of Pillars ~~I follow~~ bankruptcy Judges in this district and of course I follow my own.

So strictly speaking, it's your motion, Mr. Babcock, so I'll hear from you first, and then Mr. Steinberg, with the usual reply.

MR. BABCOCK: Your Honor, Russell Babcock here on behalf of the estate of Kathleen Pillars. I guess the problem as we see it from the New GM's perspective is that parties can and do quite often waive defenses or arguments that they may

otherwise have. Why do I think that's important here? Your Honor, there has been no evidence to suggest that this was an error on the part of New GM. New GM like anyone can take on whatever obligations they want to. If they want to rely on different contractual language they can do so. And in fact, that takes it outside the purview. We're not asking the Court here to make any changes to its rulings as to these, as to the subsequent agreements. We're saying that New General Motors has made admissions, in fact they've even used the words admissions in their complaint, and not just once, Your Honor, in paragraph 17, but I mean paragraphs 22, 27, 29, 31 through 34, 36, 37, 39 through 44, 46 and onward. There's at least 40 times where they make the same admission or incorporate the same admission I should say.

And for them to come in here, and this case as Your Honor pointed out was in the Eastern District of Michigan under Sixth Circuit rules, courts, parties, are bound by the statements of their attorneys and especially in the context of pleadings. As Your Honor is well aware, under the Federal Rules of Civil Procedure, when you answer a complaint you either make a denial or an admission. In this case they made an admission, and not only that but they made it in the notice as well. There's been no authority cited by New GM which disputes what I've just said. They say we didn't really mean it. That's not authority, that's an unsupported assertion.

And then, Your Honor, I guess with regards to the, and I guess I want to make sure we flush out the Deutsch opinion. There is a couple of key language that appeared in the subsequent version that I think is important, besides the fact that it did not have "or other distinct and discrete occurrences" which the court noted in its opinion. Also in the version that New GM is not relying upon in this particular context, in this particular case, it doesn't have the "first occurring" language which also the Court found important in the Deutsch opinion as well.

THE COURT: Doesn't "first occurring" appear in both versions?

MR. BABCOCK: Not in the excerpt that they've, well see they did quote the language they're relying on in their answer. And in fact if you look at paragraph, page 4 to exhibit 2 to their notice of removal, they quote the language that they're standing --

THE COURT: My bundle doesn't include that document. Can you hand up what you're making reference to after showing it to Mr. Steinberg?

MR. BABCOCK: Sure, I can hand you this document, Your Honor.

THE COURT: And this is from the removal petition?

MR. BABCOCK: Yeah, it's from the removal. May I approach the bench, Your Honor?

THE COURT: Yes sir.

MR. BABCOCK: Okay. That language is from the page 4 of the notice of removal. And as Your Honor can see, the language that they're representing to the District Court of the Eastern District of Michigan is this is what controls the situation from our perspective. And --

THE COURT: Give me a second to read it. Was withdrawn by a Thomas P. Branigan of Bowman and Brook in Bloomfield Hills, Michigan, attorney for New GM.

MR. BABCOCK: And I believe Your Honor --

THE COURT: Do you need this back?

MR. BABCOCK: I was going to reference it, Your Honor. I can get -- all right. And again, Your Honor, if you don't have, I apologize if you didn't get these documents, Your Honor. And again, Your Honor, in paragraph 17 to the answer to our amended complaint, now, that was marked I believe -- hold one second here -- as exhibit 4 to our pleading, I don't know if Your Honor has that as well. It says here, and I think it's the same language. It says: "all liabilities to third parties for death, personal injury or other injury to persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold, or delivered by sellers (collectively) "product liabilities" which arise directly out of accidents, incidents -- excuse me -- accidents,

incidents or other and discrete occurrences that happened or after the closing date, July 10, 2009 and arise from such --

THE COURT: What are you reading from, Mr. Babcock?

MR. BABCOCK: I'm reading from, this is the quote from paragraph 17 to New GM's answer to the amended complaint. And again, and arise from such motor vehicles' operation or performance. That's the language, Your Honor, that New GM represented to the District Court for the Eastern District, not once but on two separate occasions, two separate pleadings.

And when Your Honor considers the fact that they acknowledge in paragraph 17 that this is what they state, GM LLC admits it ultimately did assume certain liabilities, including the following as provided in section 2.3 (a)(ix) of sale agreement. That's where the quote that I just read you comes from. That's what they're relying upon, and that was from attorney Tomas Branigan from Bowman and Brook LLP on behalf of New General Motors.

So, Your Honor, the reason we're here, and this is kind of, I mean I'm not aware of any other case where New GM decided to take this approach. This is a situation where in the context of this case, New General Motors made a decision to take a certain position, and as we've pointed out in responding to that position, the language that they're relying upon provides broader liability and explore to New GM in the case which covers, in the case of my client's claim at least than

what may or may not have been accomplished in subsequent agreements, but they're not relying on the subsequent agreements in the case before the United States District Court Eastern District of Michigan which is where this case was removed by New GM.

So, Your Honor, we cited Sixth Circuit cases that would explain why the Court in that case in that venue would -- why those statements are dispositive to New GM. There's been no authority cited to the contrary. And then in --

THE COURT: Do I have the Sixth Circuit rule that you're relying on in the record?

MR. BABCOCK: Basically the Federal Rule of Civil Procedure Rule of pleading plus the two cases I was talking about, the two cases talking, which are Barnes and the McDonald opinions which appear in that no state pleading, and we cite to them. On page 4 of our brief, Barnes vs. Owens Corning Fiber Glass Corporation which is 201 F.3d 815 and page 829 is referenced specifically as the Sixth Circuit 2000 opinion. There's another one, McDonald vs. General Motors Corporation, 110 F.3d 337, 340 Sixth Circuit 1997. Again talking about the impact of admissions made by attorneys or defendants of parties in the course of litigation.

And again, Your Honor there's been no authority cited by New GM that disputes that. They say we don't really mean it. I take it as simply being buyer's remorse on their part

now that they, that the consequences of their position has become apparent now more willing to consider the impact to there is any form their opinion with regard to this Court's ruling rather than their own admissions earlier on.

THE COURT: Mr. Babcock, did the Pillars family file a claim against Old GM where its trust, back in the time when claims could still be filed?

MR. BABCOCK: Your Honor, that's the tragedy of the situation. My client was in an automobile, the estate, the decedent was in an automobile accident in 2005. She was in a, she was incapacitated until her death in 2000, I believe it was in 2012, Your Honor. And an estate was formed back in 2014.

THE COURT: Was there any kind of guardian or anything appointed for her in the time between the wreck and the time of her passing?

MR. BABCOCK: Not to my knowledge, Your Honor. In fact, the appointment took place in 2014. She had a, she had a, she was married at the time of the accident, and she was being taken care for in basically a vegetative state from my understanding at least up to the point of her death. And so that's what, and so that's what I think is the most, the tragic part about all this. New GM wants to be excused for its conduct and its statements and its actions it's made in front of Federal District Court in Michigan. But yet they want to penalize my client for something that they did when they did

nothing wrong. They were accused of, the decedent was a victim of a car accident. Her wrongful death did not occur until 2012. A wrongful death statute claim could not have been brought until her death, it goes without saying, and thus New GM is saying sorry, you're out of luck. And but yet they want this Court, to come in here and say on the other hand what we say and what we do doesn't matter. And that is where, that's where -- again, this is not going to have any impact on the ruling from this Court today on this issue that we're bringing to the Court's attention, will have no impact on the bankruptcy estate. In fact, quite the contrary, New GM's agreed to take on the additional liability which might otherwise went to the old bankruptcy.

THE COURT: Well you're not pressing that jurisdictional argument that I rejected I don't know how many times in the cases that that lawyer Gary Peller brought. You're simply saying that letting your client bring a wrongful death case against New GM isn't that big a deal?

MR. BABCOCK: Because this is just one case, Your Honor. This is, the admissions that they made in this particular case, the position that they took in this particular case involves only this particular case. It does not involve or require this Court to make any adjustments to any of its earlier rulings because --

THE COURT: I understand.

MR. BABCOCK: Yeah, so that's kind of where we're coming from, Your Honor. And again I think it's also important, that the defendant, that New GM I should say doesn't provide any explanation as to this additional changed language, the occurrence language that we already quoted. The fact that there is no "first occurrence" language in the portion that they're relying upon, the United States District Court Eastern District of Michigan, none of that is being challenged. They haven't said that we're not correct on our interpretation of that "occurrence" and or the fact that it says "or other distinct occurrences." They don't challenge any of that, Your Honor. They just say, well Your Honor made the rulings. Well Your Honor did make the rulings, and as you pointed out in the Deutsch opinion, you were, the issue in that case was whether or not "accidents" and "incidences" were, you had to deal with those particular terms.

And yet as you point out in your opinion that this "occurrence" issue wasn't even a part of it, so there was no reason to get into it. And as you pointed out in that case, no one bothered even to discuss it. And in this case we are discussing it. We've provided evidence, we provided definition term, definition for this, for this terminology. I think that, and the fact that the other additional language as we point out further supports the fact that what we have here is a much broader language.

So I guess with regards to this issue about the Deutsch opinion, I guess as a representative of a victim of these accidents, I would take the position even though I don't think that the Court needs to get to this point because I don't think you need to reverse yourself and Deutsch at all or even clarify it to give us the relief we're asking for today. But if push comes to shove, I guess and for the purpose of preserving it for the record, I guess in addition to the arguments made by the lawyers for that, for the estate in that case, I guess the way I read the terminology with all due respect to the Court is that you basically came down to "accident" or "incident" meaning at least in my opinion and how I took it, and maybe I'm wrong about this, is being the same thing. But I think that we don't need to go there. I think that the Court can grant the relief that we've already asked for to the mechanism I've already explained.

Unless Your Honor has any questions, and I guess, they have brought up these other issues about, and I just got these, I got these when I came back from vacation yesterday, about the responses to the [indiscernible] and the objection where they make the additional argument about the, whether this is, whether this is an ignition system. I guess we look at paragraph 4 to their answer to the complaint, they kind of tie it all together, they say this is all, ours is the same as everyone else's as far as the recall problem. And so I guess,

I don't think we need to go there because if you grant the relief we asked for at the very beginning, all this additional stuff becomes academic.

THE COURT: You're saying if I grant the relief you still got to prove your case in Michigan State Court or Michigan Federal Court?

MR. BABCOCK: Sure. Of course we would have to, we would have to prove the underlying case against New GM, the claims itself, yes. Unless Your Honor has any questions.

THE COURT: No, thank you. I want to hear from Mr. Steinberg.

MR. STEINBERG: Your Honor, I think the most fundamental point to start is that this lawsuit was improperly brought. It was in violation of Your Honor's sale order and injunction, and that it was a violation of the injunction to start. That actually is the starting point. Under the Seletex (phonetic) decision which we've cited to, Your Honor, many times that if there was any confusion, they were required to come in. Your Honor's Deutsch decision had been decided over three years ago, and they brought this lawsuit anyway. And they're arguing that some local counsel for New GM in the context of trying to get this to the JPML for purpose of then moving it to the MDL cited to the wrong version of the sale agreement.

THE COURT: He was a lawyer for New GM, wasn't he?

MR. STEINBERG: Yes he was.

THE COURT: And I don't know if it matters because over 45 years I've learned a little bit about the agency, but isn't there somebody at the national level that supervises local counsel?

MR. STEINBERG: I'm sure that in the context of this wave of lawsuits there was more than the local counsel just doing this. I think, Your Honor, that this was a mistake that was made.

THE COURT: It plainly was. And the consequence is, the question is, who should bear the consequences of that mistake?

MR. STEINBERG: But I don't think there's any reliance on anything here. First you start with an improperly brought --

THE COURT: Well that was the way I started, Mr. Steinberg, because more likely if not plainly we don't have a judicial estoppel, but Mr. Babcock makes a different point, he asserts a judicial admission that's contrasted to a judicial estoppel by reason of the fact that when people answer complaints we hold people to what they say.

MR. STEINBERG: People amend their answers all the time. And what was the admission that other than it was just a mistake? Because at the end of the day if we had asserted the old agreement and they had not refuted it, then are we all

governed by the old agreement instead of what was the governing agreement that applies to everybody in this case? The fact of the matter is there's an underlying agreement that governed this circumstance, the underlying agreement was the first amendment. That first amendment --

THE COURT: I didn't see much reference to that in your brief either, or attention to the distinction.

MR. STEINBERG: I think the, with regard to my brief --

THE COURT: Unless I read the wrong brief.

MR. STEINBERG: No, no, I think we say that the fact that there was a citation to the old amendment shouldn't change what the controlling law is and I think we put that in a sentence there.

THE COURT: In --

MR. STEINBERG: In our response.

THE COURT: 12 page response, it was pretty buried if it was stated.

MR. STEINBERG: Yes. If you can bear with --

THE COURT: You mean [indiscernible] reliance on subject matter jurisdiction and due process. Where is the discussion of judicial or admissions or estoppels?

MR. STEINBERG: I think, well I think Your Honor on page 7, footnote 5, New GM may have inadvertently referred to the original language contained in section 2(b)(3)(b)(9) of the

sale agreement --

THE COURT: I see. All right.

MR. STEINBERG: -- and certain pleadings filed in the underlying lawsuit, the language contained in the first amendment with respect clearly governs this matter. Perhaps we didn't give it the attention that Your Honor wanted us to give the attention because we didn't think it mattered that much because at the end of the day --

THE COURT: It matters critically, Mr. Steinberg.

MR. STEINBERG: Well, Your Honor, this issue actually did come up in Deutsch. The first hearing that you had in Deutsch, people had cited actually to the wrong amendment, you actually had I think a second hearing on Deutsch where you analyzed what would be the governing position, and you actually in the Deutsch decision compared the language that was in the June 26th, 2009 agreement versus the first amendment and said no one has explained why the language changed, and therefore it could have been because it was duplicative or otherwise, but otherwise you were going to discount it. So this actual, you know, this actual problem actually took place before in the Deutsch case and Your Honor handled it that way by just looking at the actual agreement. And maybe that's the reason why we didn't give it as much attention in our brief that perhaps it warranted.

But I go back and I also wanted to just address the

issue that Your Honor said that you thought that we perhaps miss-cited the section in our own brief. If you were referring to page 2 of our brief, we were actually citing to the section that was in the retained liabilities portion of the sale agreement as compared to the assumed liabilities and that is the right quote of how it was written in the retained liabilities. So I think we got it right in our pleading.

But fundamentally what happened is that you had an improperly started lawsuit in violation of Your Honor's sale order. And we had deadlines in the state court because those things go forward. We sent the no stay letter to them, and in the meantime we had to try to remove this to the JPML and get it ultimately before Judge Furman (phonetic) in the MDL, and the statement that is being referred to here has no material difference as to whether we cite it to the first amendment or the second amendment, the June 26th agreement or the first amendment, because the central focus was that it had bankruptcy court jurisdiction and there was a basis for federal removal, it relates to the bankruptcy case. New GM was disclaiming liability and was saying that it should all be ultimately moved to the MDL where it gets stayed because they're handling [indiscernible] cases, and it's subject to Your Honor's order. We waited then for them to file their response to the no stay pleading and then Your Honor entered the judgment and that created a separate procedure for the same thing.

Once in the, so the answer that was filed was the answer that was filed in conjunction with something that was ultimately going to be removed and stayed and ultimately the answer should not have necessarily been required to be filed because this action never should have been brought in the first place. It was a violation of the Deutsch decision. There's no, there's no judicial admission of anything because there was no attempt to admit to an older agreement versus a new agreement.

And if Your Honor needs a declaration from someone to say that it was a mistake and answers could be amended all the time, and so therefore I don't think in the very early stages of an improperly led complaint you can say there's a judicial admission of anything. This would have been amended if this case would have gone forward, but this case never should have been brought in the first place.

And I think the estate representative is the husband who was taking care of the wife since the accident in 2005. So Your Honor had this issue in Deutsch, unfortunately local counsel made a mistake in responding where the goal was just to get this to the MDL where it would be stayed while we simultaneously would be dealing with this in the bankruptcy court to say that it was subject to Your Honor's order. There's no difference as to whether we cited the first amendment or the June 26th amendment for purposes of the over-

reaching point, that this was an improperly started lawsuit, that this was, that there was federal jurisdiction based on the bankruptcy court on this, and that this matter should be ultimately removed to the federal court and then to the JPML.

Your Honor's decision in Deutsch also said that if you even relied on the old amendment that it wasn't sure whether there was any difference. And if you look at their brief when they decide, when they're focusing on the word occurrence --

THE COURT: I read Deutsch this morning again, I did not see in there but you can refresh my recollection if I'm mistaken any suggestion that if the words occurrence had appeared and the words first occurring had not appeared, that I had then ruled, assuming it wouldn't have been dictum, that the conclusion would be the same.

MR. STEINBERG: I don't think you said that. I think on page 5 of the Deutsch decision --

THE COURT: Give me a second please. Well I have it in the B.R. form, is it in the discussion or where?

MR. STEINBERG: It is in the discussion, it is after the heavily blocked quote, and it starts with the paragraph, but while incidents may be deemed to be somewhat ambiguous.

THE COURT: Right. I'm with you now. Basically I said is I didn't have an evidentiary basis for concluding, making conclusions as to the reasons for the change.

MR. STEINBERG: But the reason why this was even in your decision was because there was the same mistake that was made before, people were referring to the June 26th amendment in an earlier hearing and Your Honor was struggling with would it have made a difference, why was the change being made. If people had cited to it properly the first time even in Deutsch, you never would have had to deal with this discussion, because the operative agreement is what controls. And that is really you know we didn't say it in lots of words, sometimes you get criticized for being verbose, here we basically said there is one agreement, that is the agreement that is controlling, that is what Your Honor has to apply in this case.

No matter what we said, we could say that the sky is orange, but the sky is blue, that's what you have to recognize. Here, there was no attempt to change a different agreement with respect to a plaintiff who improperly started a lawsuit based on an accident that took place ten years ago. The rest of the arguments, I think, Your Honor, I think if, once you find that there are prepetition non-ignition switch plaintiff, then the rest flows from the judgment on the due process arguments and the Court's jurisdiction argument. And so I think really we're left to, and I think Your Honor has already said that you believe that Deutsch is applicable or not for this particular issue where a local counsel had improperly cited to a June 26th, but it wasn't to take any advantage, no court has ruled

on this matter. The JPML hasn't even ruled on the removal action.

And frankly again, and I'll conclude with this, and I know I've said it a number of times, it all starts with the fundamental notion that this was an improperly brought lawsuit. And to say that someone in an answer said something on a lawsuit that never should have been brought which was a violation of an injunction I don't think they should be able to bootstrap that type of argument. Thank you.

THE COURT: Mr. Babcock.

MR. BABCOCK: New GM filed a 58 page answer, a very detailed, they went through quotes, it's a very detailed answer. To suggest that what they say in this very detailed answer should be disregarded by this Court flies in the face of what the purpose of an answer is which is either make denials or make admissions. They could have just said denied, isn't true, denied, isn't true. But they instead they made the decision to make admissions. They have not, as Your Honor, as you pointed out when you, during opposing counsel's -- they have not cited any authority that says they are excused from the consequences of what they did, and I mean what the lawyers in that case did.

Your Honor, unless Your Honor has any questions for us, we'd --

THE COURT: Have everybody sit in place for a minute.

Gentleman, ladies and gentlemen, I'm ruling that the Pillars action can proceed against the New GM and that New GM will have the duty and of course the right to defend it on the merits without expressing [indiscernible] merits in the filing of my findings of fact conclusions of law, and bases for the exercise of my discretion in connection of this decision, although I don't think I'm really relying on my discretion in any way on this.

At the outset of oral argument, I recognized, as we all had to recognize, my Deutsch decision, which if it had been decided in a vacuum, this controversy had been decided in a vacuum based upon the proper language of the sale agreement, would have resulted in a victory for New GM. But the fact that had the potential ability to change the applicability of the Deutsch decision was the language under which New GM's assumption of its liabilities would rest.

In Deutsch, as we all know, the key language was "accidents or incidents first occurring." And the underlying principal of that was that each word had to be given individual meaning, although they could overlap. It is not disputed that a local counsel through GM said in two separate submissions, first in a notice of removal and then also in an answer, perhaps I'm flip-flopping their chronological order, but in two separate documents, that New GM had assumed liabilities for "accidents, incidents or other occurrences, and did not rely on

the words first occurring or mention the words first occurring. As I discussed in the Deutsch opinion, first occurring had significance as well. As I indicated at the outset of oral argument, this is not a judicial estoppel, the requirements for judicial estoppel of reliance by the tribunal is missing. Nevertheless, as Mr. Babcock properly pointed out, it is a judicial admission, which is similar in some respects, but different in others. It is not for instance a statement in a brief. It's a statement in the answer, which has significance. Answers have to be taken seriously. Although it is true that answers can thereafter be amended, unless and until they have been, they stand. Judges need to have the ability to rely on answers because answers take issues off the table.

So then we get to the issue as to whether what GM's counsel, which is obviously an agent, [indiscernible] should be regarded because the litigation shouldn't have been brought in the first place. Well, lots of litigations were brought in what we now know to have been violation of my earlier order. And when I had become aware of that, I have stopped them, I have stopped them by stays. And it's for that reason that this litigation is stayed. But it was one thing to say that this action should be stayed, then later dismissed, and quite a different way to say never mind, [indiscernible] vis-a-vis everything that happened in the first place.

I have not ruled to that effect in any of the 22

decisions that previously issued in connection with the GM case, and I am not of the mind to do that now. Obviously GM has the ability to ensure that its counsel do their jobs, and it's not too much to hold GM for the consequences of what its counsel, who is plainly an agent, did. So having admitted that New GM is liable for accidents, incidents or other occurrences, I think have to parse those words. Under the principals of Deutsch, each word is to be given meaning. Accidents refers to wrecks, we all know what an accident is. Incidents are, applies to, something that can include wrecks but can also include other things. And as I ruled in Deutsch in the Pillars actions, repeating or characterizing my ruling in Deutsch, that covers things like explosions, fires, car running off the road and the like. Occurrences can overlap with that, but it can also have some other meaning. And in this instance, occurrences, which as far as I'm aware has not and will not ever be the subject of another judicial construction in this case. But the principals of Deutsch should be construed as meaning something else, and the arguments made by Pillars' counsel in its brief that death from that is subject to coverage under that ambiguity. Of course, the construction of documents when they're ambiguous necessarily must go against the drafter.

So I'm going to allow this lawsuit to proceed, and I'm going to state a couple of things for the avoidance of doubt, although they should be obvious. One is I reiterate for

the 900th time that I have subject matter jurisdiction over this dispute. As is apparent from everything that I've said, this applies only to this particular judicial admission in this particular wrongful death case, and has no bearing on anything that I ruled on April 15th or on the Gary Gutler (phonetic) matters [indiscernible]. It does however, mean that New GM has to defend this wrongful death case. And if it doesn't like defending wrongful death cases when its local counsel admit things that maybe they shouldn't have been admitted to, it should supervise its counsel more carefully.

That summarizes my rulings. If New GM really wants to appeal this, I reserve the right to issue a written opinion. But as you all well know, I've got so many things beyond that to deal with in GM and for that matter other cases on my watch, that I'm not going to write on this unless I need to.

Mr. Babcock, you or your co-counsel can settle an order in accordance with this ruling. Not by way of reargument, are there any questions?

MR. STEINBERG: Your Honor, will we have, can we have the opportunity to make a submission, and I don't know whether this is true or not, I would need to verify that at the time to answer or amend, we had a right to amend the answer, that this is not a judicial admission to give further briefing.

THE COURT: There was plenty of time to focus on these issues before today. That's my ruling.

MR. STEINBERG: All right.

THE COURT: Mr. Steinberg, I have a zillion things on my watch and I have to rely on lawyers dealing with issues in a timely way. We can't have do-overs after I've ruled. I had the same issue with a motion for reargument now which is in substance a do-over after I've ruled, I'm not going to invite even more stuff of that character. Anything else?

MR. BABCOCK: Your Honor, I'm not familiar with how the Court handles its orders.

THE COURT: Do you want to stand please? I take it in most of the courts you would stand when you're talking to a Judge?

MR. BABCOCK: I'm sorry, Your Honor, I wasn't being disrespectful. Okay, at this point, the lawyers, would GM be submitting a proposed order? Is that, do I understand what your instruction was or do you want me to prepare an order?

THE COURT: I said you are to settle an order. We have local court rules in this Court to deal with the settlement of orders.

MR. BABCOCK: Okay, Your Honor.

THE COURT: Okay. Anything else? Have a good day. We're adjourned.

MR. WEISFELNER: Your Honor, I apologize. This is a procedural housekeeping issue. And let me see if I can't state succinctly what the issue is.